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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RICHARD E. ELLIS, et al.,

12 Plaintiffs,

13 vs.

14 WELLS FARGO BANK, N.A., et al.,

15 Defendants.
16

CASE NO. 13-CV-1279 W(WVG)

**ORDER GRANTING MOTION
TO REMAND CASE TO STATE
COURT [DOC. 6] AND
TERMINATING MOTION TO
DISMISS [DOC. 3]**

17 Pending before the Court is a motion to remand filed by Plaintiffs Richard E. Ellis
18 and Sharie M. Ellis. Plaintiffs seek to remand this case to the San Diego Superior
19 Court. Defendant Wells Fargo Bank, N.A., opposes.

20 The Court decides the matter on the papers submitted and without oral
21 argument. See Civ.L.R. 7.1(d.1). For the reasons stated below, the Court **GRANTS**
22 Plaintiffs' motion [Doc. 6].
23

24 **I. BACKGROUND**

25 Plaintiffs reside in La Jolla, California, and are citizens of California. (*Compl.*
26 [Doc 1-1], ¶ 6.) Defendant Wells Fargo Bank, N.A. ("Wells Fargo") is a national
27 banking association, with its principal place of business in San Francisco, California and
28 its main office in South Dakota. (*Compl.*, ¶ 7; *Opp.* [Doc. 9], 2:2-4 .)

1 In August 2006, Plaintiffs purchased property located at 5448 La Jolla Blvd., Unit
2 F101, La Jolla, CA 92037 (the "Residence"). (*Compl.*, ¶ 17.) "Plaintiffs executed a
3 series of documents, including but not limited to, a Note and Deed of Trust, securing
4 the Note in the amount of \$680,000 on the Residence." (*Id.*) Wells Fargo is the
5 original mortgage broker, lender and servicer used to purchase the loan. (*Id.*, ¶ 7.)

6 On March 11, 2013, Plaintiffs filed a Complaint against Defendants in the San
7 Diego Superior Court alleging seven state-based causes of action. On June 3, 2013,
8 Wells Fargo removed the lawsuit to this Court based on diversity jurisdiction. Plaintiffs
9 now seek remand on the basis that Wells Fargo is a California citizen since its principal
10 place of business is in San Francisco. Wells Fargo opposes arguing that as a national
11 bank, it is only a citizen of South Dakota, where its main office is located.

12 13 **II. DISCUSSION**

14 An action is removable to federal court only if it might have been brought here
15 originally. *See* 28 U.S.C. §1441(a). The removal statute is "strictly construe[d]...
16 against removal jurisdiction." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
17 1992)(per curiam). "Federal jurisdiction must be rejected if there is any doubt as to the
18 right of removal." *Id.* "Th[is] 'strong presumption' against removal jurisdiction means
19 that the defendant always has the burden of establishing that removal is proper." *Id.*

20 Diversity jurisdiction exists where the amount in controversy exceeds \$75,000
21 and the suit is between citizens of different States. 28 U.S.C. §1332(a)(1). For
22 purposes of diversity jurisdiction, corporations are generally considered citizens of the
23 state of incorporation and principal place of business. 28 U.S.C. § 1332(c)(1).
24 However, a national bank's citizenship for purposes of diversity jurisdiction is governed
25 by 28 U.S.C. § 1348. This section provides:

26 All national banking associations shall, for the purposes of all other
27 actions by or against them, be deemed citizens of the States in which they
28 are receptively located.

1 28 U.S.C. § 1348. Thus, whether diversity jurisdiction exists in this case depends on
 2 if the term “located” includes 28 U.S.C. § 1332(c)(1)’s principal-place-of-business test.
 3 If it does, because Wells Fargo’s principal place of business is in California, diversity
 4 jurisdiction would not exist.

5 As an initial matter, this Court recognizes that there is considerable disagreement
 6 regarding the interpretation of “located” in section 1348. While Wells Fargo argues
 7 that most published decisions have interpreted “located” to only include a national
 8 bank’s main office, there is also a significant number of cases that have interpreted the
 9 term to also include a bank’s principal place of business.¹ Moreover, there appears to
 10 be a growing number of cases in this district that have found the principal-place-of-
 11 business test applicable to national banks. See Ortiz v. Wells Fargo Bank, N.A. 2013
 12 U.S. Dist. LEXIS 5661 (2013); Bickoff v. Wells Fargo Bank, N.A., 2013 U.S. Dist.
 13 LEXIS 2293 (S.D. Cal. Jan. 4, 2013); Uriarte v. Wells Fargo Bank, N.A., 2011 U.S.
 14 Dist. LEXIS 127497 (S.D. Cal. Nov. 3, 2011); Saberi v. Wells Fargo Home Mortg.,
 15 2011 U.S. Dist. LEXIS 5286 (S.D. Cal. Jan. 20, 2011). Wells Fargo nevertheless argues
 16 that under Wachovia Bank v. Schmidt, 546 U.S. 303 (2006), national banks are only

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 20 ¹ The following is not intended to be an exhaustive list, but simply to illustrate the
 21 growing conflict among district courts within the Ninth Circuit. Cases that interpret “located”
 22 to include a national bank’s principal place of business include: Inyang v. Resmae Morg. Corp.,
 23 2012 U.S. Dist. LEXIS 181975 (C.D. Cal. Dec. 26, 2012); Haqq-Ali v. Wells Fargo Bank,
 24 N.A., 2012 U.S. Dist. LEXIS 124502 (C.D. Cal. Aug. 31, 2012); Brew v. Wells Fargo Bank,
 25 N.A., 2012 U.S. Dist. LEXIS 6796 (E.D. Cal. Jan. 19, 2012); Guinto v. Wells Fargo Bank, 2011
 26 U.S. Dist. LEXIS 114986 (E.D. Cal. Oct. 5, 2011); Stewart v. Wachovia Mortg. Corp., 2011
 27 U.S. Dist. LEXIS 85822 (C.D. Cal. Aug. 2, 2011); Goodman v. Wells Fargo Bank, N.A., 2011
 28 U.S. Dist. LEXIS 63165 (C.D. Cal. June 1, 2011); Guterman v. Wachovia Mortg., 2011 U.S.
 Dist. LEXIS 74521 (C.D. Cal. Mar. 31, 2011); Mount et al. v. Wells Fargo Bank, N.A., 2008
 U.S. Dist. LEXIS 98193 (C.D. Cal. Nov. 24, 2008).

Cases that interpret “located” to include only a national bank’s main office include:
Silva v. Wells Fargo Bank N.A., 2011 U.S. Dist. LEXIS 64636, 2011 WL 2437514 (C.D. Cal.
 June 16, 2011); Tse v. Wells Fargo Bank, N.A., 2011 U.S. Dist. LEXIS 6796 (N.D. Cal. Jan. 19,
 2011); Ngoc Nguyen v. Wells Fargo Bank, N.A., 749 F. Supp. 2d 1022, 1027-28 (N.D. Cal.
 2010); Cal. ex rel. Bates v. Mortg. Elec. Registration Sys., Inc., No., 2010 U.S. Dist. LEXIS
 81650 (E.D. Cal. July 21, 2010); DeLeon v. Wells Fargo Bank, N.A., 729 F. Supp. 2d 1119,
 1123-24 (N.D. Cal. 2010); Peralta v. Countrywide Home Loans, Inc., 2009 U.S. Dist. LEXIS
 112387 (N.D. Cal. Nov. 16, 2009).

1 citizens of the state in which the main office is located and that Schmidt “rejected”
 2 application of the principal-place-of-business test to national banks.

3 In Schmidt, a national bank filed a diversity action against several South
 4 Carolina citizens. After judgment was entered in favor of the defendants, the Court of
 5 Appeal evaluated whether diversity jurisdiction existed. The court found that because
 6 the bank had a branch office in South Carolina, the bank was “located” in South
 7 Carolina and, therefore, was a South Carolina citizen for purposes of diversity.
 8 Accordingly, the Court of Appeal vacated the district court judgment, finding that it
 9 lacked subject-matter jurisdiction.

10 The Supreme Court rejected the Court of Appeal’s expansive interpretation of
 11 the term “located” and held that a national bank, for purposes of diversity jurisdiction,
 12 “is a citizen of the State in which its main office, as set forth in its articles of association,
 13 is located.” Id., 546 U.S. at 307. The Court explained:

14 Were we to hold, as the Court of Appeal did, that a national bank is
 15 additionally a citizen of every State in which it has established a branch,
 16 the access of a federally chartered bank to a federal forum would be
 17 drastically curtailed in comparison to the access afforded state banks and
 other state-incorporated entities. Congress, we are satisfied, created no
 such anomaly.

18 Id. In a footnote, the Court acknowledged that Firstar Bank, N.A. v. Faul, 253 F.3d
 19 982 (7th Cir. 2001) and Horton v. Bank One, N.A., 387 F.3d 426 (5th Cir. 2004) had
 20 interpreted the term “located” to include a national bank’s main office and principal
 21 place of business. Id. at n 8. But the Court refused to express an opinion on the issue
 22 because it “is not presented by the parties or necessary to today’s decision.” Id.

23 Given Schmidt’s explicit refusal to decide whether the term “located” includes
 24 a bank’s principal place of business, Wells Fargo’s claim that the decision rejected the
 25 principal-place-of-business test and “parity between national banks and corporations”
 26 (see *Opp.* [Doc. 9], 4:12–13), lacks merit. And although Schmidt acknowledged that
 27 the principal-place-of-business test is not found in section 1348’s language, the same is
 28 true of the term “main office.” Neither term is found in section 1348. Indeed, Schmidt

1 recognized that “‘located’ is not a term of enduring rigidity” and instead focused on a
 2 discussion of section 1348's predecessor statutes, which the Court found sought to
 3 establish parity between national banks and state banks regarding access to federal
 4 courts. Schmidt, 546 U.S. at 310–312. For this reason, this Court is persuaded that
 5 Firststar and Horton are in harmony with and most accurately reflect Schmidt's
 6 reasoning.

7 In Horton, a national bank filed a diversity lawsuit. Similar to the situation in
 8 Schmidt, the district court interpreted “located” in section 1348 to include a bank's
 9 branch offices. Because one of the defendants was a citizen of a state in which the bank
 10 had a branch office, the district court found diversity was lacking. The Seventh Circuit
 11 reversed, relying in large part on section 1348's predecessor statutes:

12 Congress passed 28 U.S.C. § 1348 against an interpretive background
 13 which assumed the national banks were to have the same access to the
 14 federal courts as state banks and corporations. No language in the statute
 15 indicates a rejection of this existing construction. A useful contrast can
 16 be drawn with the 1882 Act, which stated with exceptional clarity that
 17 national banks should not be able to resort to federal courts solely by
 18 virtue of their status as federal creations. Since Congress did not include
 19 any language suggesting that it intended to alter the established
 background assumption that federal courts have the same jurisdiction over
 national banks as over any other corporation, we presume that Congress
 intended for 28 U.S.C. §1348's meaning to comport with the judicial
 interpretations of its predecessor.

20 Id. at 988–989. See also Horton, 387 F.3d 426.

21 Because the Ninth Circuit has not yet addressed the issue in the wake of
 22 Schmidt, and Horton's reasoning appears consistent with Schmidt's reasoning, this
 23 Court finds that under section 3148, Wells Fargo Bank is “located” in California, and
 24 thus diversity jurisdiction is lacking.

25 Finally, Plaintiffs' also seek to recover attorney's fees. Given the unsettled state
 26 of the law within the Ninth Circuit on the issue, Defendant did not lack an objectively
 27 reasonable basis for seeking removal. 28 U.S.C. §1447(c); see Martin v. Franklin

1 Capital Corp., 546 U.S. 132, (2005). Thus, the Court finds Plaintiffs are not entitled
2 the fees and costs incurred as a result of the removal.

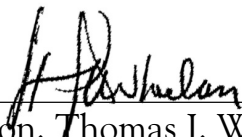
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4 **II. CONCLUSION**

5 For the reasons stated above, Plaintiffs' motion to remand is **GRANTED**
6 [Doc. 6]. This case is hereby **REMANDED** to the San Diego County Superior Court.
7 Plaintiffs' request for attorneys' fees is **DENIED**.

8 Additionally, in light of this order, Wells Fargo's motion to dismiss is
9 **TERMINATED**.

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11 **IT IS SO ORDERED.**

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13 DATED: February 14, 2014

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16 Hon. Thomas J. Whelan
17 United States District Judge
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